KEROGEN CRUSHERS

IBLA 85-518 Decided December 19, 1986
85-636

Appeal from decisions of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease applications W-92442, W-92457, W-93211, and NM-62232.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

BLM may properly reject a simultaneous oil and gas lease application filed on behalf of a partnership if the applicant has not complied with the provisions of 43 CFR 3112.2-3 by disclosing the identity of all partners on the application or on a sheet accompanying the application, a substantive requirement of the oil and gas leasing program.

APPEARANCES: R. Hugo C. Cotter, Esq., Albuquerque, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Kerogen Crushers appeals from decisions of the Wyoming State Office, Bureau of Land Management (BLM), rejecting simultaneous oil and gas lease applications W-92442, W-92457, W-93211, and NM-62232. 1/ Appellant's lease applications for several parcels in the December 1984 and February 1985 simultaneous oil and gas lease drawings were selected and assigned first priority.

On part B of each application form (Form 3112-6a (April 1984)) appellant identified itself as "Kerogen Crushers (a Mississippi Partnership)." In the space provided on the forms to state "FULL NAME OF OTHER PARTIES IN INTEREST, (IF APPLICABLE)" appellant wrote "Qualifications Filed." The forms were signed by George S. Haymans III, a general partner.

Citing 43 CFR 3112.2-3, BLM rejected the applications because appellant had not submitted, either on the application form or on a separate accompanying sheet, the names of all other parties holding an interest in the applications.

1/ Applications W-92442 and W-92457 were rejected by decision dated Mar. 29, 1985. Applications NM-62232 and W-93211 were rejected by decisions dated Apr. 4, and May 9, 1985, respectively.

Appellant argues in its statement of reasons that there are no second or third priority drawees whose rights must be preserved, that there is neither fraud nor multiple filings, and that its failure to timely submit the names of the other parties interested in its applications is a de minimis variation from the requirements which it cured by later submitting its membership list to BLM. 2/ Appellant also asserts that rejection for failure to provide the names of all parties in interest is discretionary.

[1] The regulatory requirement upon which BLM's decision is based reads in part:

> Compliance with Subpart 3102 of this title is required. The applicant shall set forth on the lease application, or on a separate accompanying sheet, the names of all other parties who hold an interest (as defined in § 3000.0-5(k) of this title) in the application, or the lease, if issued.

43 CFR 3112.2-3.

On August 19, 1983, BLM announced that the newly promulgated version of 43 CFR 3112.2-3, 48 FR 33648 (July 22, 1983), would be strictly enforced:

> After August 22, 1983, applications for simultaneously offered parcels received from associations, including partnerships, must be accompanied by a complete list of individuals who are members thereof. This requirement is authorized under 43 CFR 3102.5. By this notice, the Bureau of Land Management formally interprets and exercises its right of demand for this information at the time application is made.

48 FR 37656 (Aug. 19, 1983).

In its announcement, BLM stated that the purpose of strict enforcement of the regulation at 43 CFR 3112.2-3 is "to preserve the integrity of the simultaneous oil and gas leasing program by ensuring against multiple filings on a single parcel as prohibited by amended § 3112.5-1." 48 FR at 37656. Further, disclosure of parties-in-interest allows BLM to review applications against the acreage limitations set forth in 43 CFR 3101.2. Satellite 8211104, 89 IBLA 388, 395 (1985). Appellant is deemed to have knowledge of 43 CFR 3112.2-3 and the requirement that partnership applications must be accompanied by a complete list of members since both were published in the Federal Register and were a matter of public record. 44 U.S.C. § 1507 (1982); see Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 385 (1947); W.O.I.L. Associates, 85 IBLA 394 (1985).

Appellant's argument that it cured a de minimis variation from the requirements has previously been addressed by the Board. In BTA Oil Producers, 91 IBLA 268, 271 (1986), we stated in part:

2/ On Apr. 5, 1985, appellant filed with the Wyoming State Office a list of the names and addresses of all its partners.

> [Appellant's] assertion that the failure to disclose the members of the partnership is inconsequential must be rejected. The requirement that all partners be identified on the application is substantive and is reasonably related to a legitimate agency activity. Although the identities of the members of a partnership receiving priority could be determined upon inquiry after a drawing, this is not a substitute for disclosure prior to the drawing. In light of the large number of partnerships and associations that participate in the simultaneous drawings, advance disclosure of the identity of the partners or members is required to guard against illegal multiple filings on the same parcel by an individual who is participating in and thus holding an interest in more than one partnership or association. The identity of the parties who hold an interest in all associations and partnerships participating in the drawing must be known, not just the identity of those who hold an interest in the successful drawee. See The Turner Association, 85 IBLA 374, 377 (1985).

We reject appellant's argument that rejection is discretionary. 3/ In BTA Oil Producers, supra at 272, we concluded that rejection of an oil and gas lease application was required where a partnership failed to disclose its members:

> Departmental regulation, 43 CFR 3112.5-1(a), requires that "[a]ny application determined by adjudication as not meeting the requirements of Subpart 3112 of this title shall be rejected." The Board has held that a failure to disclose the members of an association in compliance with the regulations requires rejection of a simultaneous oil and gas lease application. E.g., W.O.I.L. Associates, supra; The Turner Association, supra. The policy and enforcement notice published at 48 FR 37656 defined partnerships to be among those entities which must identify their members. The policy of rejecting applications when the parties-in-interest are not disclosed is properly applied to partnerships.
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> Thus, BLM properly rejected [appellant's] application for failure to disclose the identity of its partners prior to the closing date for filing simultaneous applications. On [the closing date, appellant's] application was incomplete and [appellant] was not a qualified applicant.

3/ Appellant bases his argument on the following sentence which appeared in BLM's Aug. 19, 1983, announcement, cited previously: "Failure by associations or partnerships to comply with this requirement shall result, at the discretion of the authorized officer, in unacceptability or rejection of the application." This sentence only refers to BLM's discretion to determine whether the application is deemed unacceptable or rejected for the purpose of disposition of the application form and filing fees. See 43 CFR 3112.3; but see generally Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (1984).

We believe our findings in BTA Oil Producers, supra, are applicable to the instant case and therefore conclude BLM properly rejected appellant's simultaneous oil and gas lease applications.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

John H. Kelly
Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge

ADMINISTRATIVE JUDGE BURSKI CONCURRING:

While not in disagreement with the ultimate result reached in the instant case, I do believe appellant raises one issue which has not been previously examined by the Board. I refer to appellant's argument that BLM's new practice of selecting only one application for priority purposes with respect to each parcel has altered the theoretical basis upon which the Board has sustained rejection of applications for failure to timely comply with disclosure requirements. While I recognize that BTA Oil Producers, 91 IBLA 268 (1986), almost certainly dealt with the same problem, a review of that case indicates that this precise argument may not have been raised therein.

Succinctly stated, appellant's position is that, in the past, the Department has justified the rejection of incomplete offers on the ground that under the statute the Department must lease to the first-qualified offeror. Accordingly, where an applicant has failed to make mandatory disclosures within the time required, the applicant cannot subsequently submit the necessary documentation because to do so would be unfair to those drawn with subsisting priorities who had complied with the regulations. In other words, the failure to submit the documentation is not curable since the rights of other parties would be adversely affected. See 43 CFR 1821.2-2(g)(2). Appellant argues that since BLM now only selects one application for priority (as opposed to its former practice of selecting three) there is no reason to refuse to allow the successful drawee to rectify the deficiency so long as the error was one of form rather than substance. See, e.g., Conway v. Watt, 717 F.2d 512 (10th Cir. 1983). In other words, where an applicant has not made a multiple filing or exceeded acreage restrictions, he should be allowed to submit a statement listing other members of a partnership prior to rejection of his application without loss of priority, since no third party would be adversely affected by allowing him to cure, because no one has any subsisting priority after a drawing. Were the facts as appellant alleges, I think he would have a point of some substance.

As I see it, the problem with this argument rests in the fact that appellant has overlooked one crucial aspect of the changes effected by BLM in the drawing procedures. Under the past regulations, if BLM rejected all three priority drawees, the parcel would be returned to the simultaneous pool for new filings. Thus, an individual who had participated in the drawing but who had not been accorded any priority could not obtain a lease on the parcel pursuant to his or her original application. Under the present system, however, should the priority applicant be rejected, 43 CFR 3112.4-1(a) provides that "a reselection from the remaining applications shall take place." This being the case, BLM's new procedure has actually expanded, rather than contracted, the universe of people who would be adversely affected by allowing curative action by the applicant. Thus, the old rule prohibiting curative action must still obtain.

I recognize that BLM changed the regulation on the theory that, by selecting only one application, it was removing the possibility of protests from other applicants. Under my analysis, however, BLM, has increased rather than decreased the number of people who may protest. Be that as it may, I believe that the present procedures, by maintaining the viability of all applications until actual lease issuance, have resulted in a system in which all applicants have a legitimate and cognizable interest in seeing the lease issue to the first-qualified applicant, which interest would be adversely affected by allowing curative action. Thus, appellant's argument, though interesting, must be rejected.

James L. Burski
Administrative Judge